

PROVIDING FOR THE TRANSFER OF CASES BETWEEN DISTRICT COURTS AND THE COURT OF CLAIMS

AUGUST 22, 1960.—Ordered to be printed

Mr. KEFAUVER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 5396]

The Committee on the Judiciary, to which was referred the bill (H.R. 5396) to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. Page 1, line 8, delete the words "unless the parties consent to dismissal" and insert in lieu thereof "if it be in the interest of justice".
2. Page 1, line 9, at the end of subsection (c), change the period to a comma, strike the quotation mark, and add the following:
where the case shall proceed as if it had been filed in the Court of Claims on the date it was filed in the district court."
3. Page 2, line 6, delete the words "unless the parties consent to dismissal" and insert in lieu thereof "if it be in the interest of justice".
4. Page 2, line 8, at the end of new section 1506, change the period to a comma, strike the quotation marks, and add the following:
where the case shall proceed as if it had been filed in the district court on the date it was filed in the Court of Claims."

5. Page 2, following the analysis after line 11, add a new section, as follows:

SEC. 3. The first sentence of section 2 of the Act of March 9, 1920 (title 46, United States Code, sec. 742) is amended to read as follows:

"In cases where if such vessel were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate non-jury proceeding in personam may be brought against the United States or against any corporation mentioned in section 1 of this Act."

6. Page 2, line 12, substitute "SEC. 4" for "SEC. 3".

7. Page 2, line 12, after the word "by" insert the words "sections 1 and 2 of".

8. Page 2, line 15, after the period, add the following:

The amendment made by section 3 shall apply to any case or proceeding brought after the date of enactment of this Act.

9. Amend the title so as to read:

To amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims, and for other purposes.

PURPOSE OF AMENDMENTS

The purpose of the amendments is to make as certain as possible that suits brought against the United States for damages caused by vessels and employees of the United States through breach of contract or tort can be originally filed in the correct court so as to proceed to trial promptly on their merits.

The amended language in sections 1 and 2, suggested by the Judicial Conference of the United States and the Maritime Law Association of the United States, was inserted in order to make it clear that filing suit in the wrong court cannot operate either to shorten or enlarge the applicable statute of limitations or to change or modify the applicable rule respecting counterclaims or offsets.

The new section 3, which clarifies the language of the first or jurisdictional sentence of section 2 of the Suits in Admiralty Act (41 Stat. 525; 46 U.S.C. 742), was suggested by the Department of Commerce and endorsed by the Maritime Law Association. Its purpose is to prevent the repetition of misfilings in the future. It restates in brief and simple language the now existing exclusive jurisdiction conferred on the district courts, both on their admiralty and law sides, over cases against the United States which could be sued on in admiralty if private vessels, persons, or property were involved.

PURPOSE

The purpose of the bill, as amended, is to authorize the transfer of cases between the U.S. district courts and the Court of Claims, and vice versa. The bill also clarifies confusing language now existing in section 2 of the Suits in Admiralty Act (41 Stat. 525, 46 U.S.C. 742).

STATEMENT

The bill, H.R. 5396, as passed by the House of Representatives provides (in secs. 1 and 2) that whenever cases are filed in the wrong court the mistaken filing can be corrected by the transfer of such misfiled cases between the district courts and the Court of Claims and vice versa. Jurisdictional defects will thus be cured and dismissal of cases too late for refileing in the proper court will be prevented.

Contract suits against the United States involving certain maritime transactions may be brought either in the Court of Claims or in the U.S. district courts in admiralty depending upon the statutory authority involved. Thus, suits under the Suits in Admiralty Act (41 Stat. 526, 46 U.S.C. 741) and the Public Vessels Act (43 Stat. 112, 46 U.S.C. 781) lie exclusively in admiralty in the U.S. district courts, while under the Tucker Act (28 U.S.C. 1346) there is concurrent jurisdiction in the district courts and the Court of Claims for claims not exceeding \$10,000 and exclusive jurisdiction in the Court of Claims for claims in excess of \$10,000. In addition to jurisdictional differences under these statutes, there are also differences in the applicable statutes of limitations. Under the Tucker Act the statute of limitations is 6 years, while under the Suits in Admiralty Act and the Public Vessels Act it is 2 years.

Since the applicability of these acts to a given factual situation is frequently exceedingly difficult to determine and a question on which reasonable men may differ, lawyers in maritime practice occasionally and unavoidably bring suit in the wrong forum. This presents no problem in claims under \$10,000 brought in the district courts. If improperly brought in admiralty, the case may be transferred to the law side of the court (*The Everett Fowler*, 151 F. 662 (2d Cir. 1945), certiorari denied, 327 U.S. 804 (1945)). It would seem that the converse would also be held proper where a case filed on the law side is held to be properly under the Suits in Admiralty Act.

The serious problem, and the one to which this bill is directed, arises in claims exceeding \$10,000 where there is uncertainty as to whether a suit is properly brought under the Tucker Act on the one hand or the Suits in Admiralty or Public Vessels Act on the other. Since, under existing law, cases are not transferrable between the district courts and the Court of Claims, an inappropriate choice of jurisdiction may result in the statute of limitations having run against a claim by the time the issue of appropriate jurisdiction is finally adjudicated.

A substantial portion of the jurisdictional uncertainty in this area is attributable to confusion in establishing whether a vessel is a "merchant vessel" or a "public vessel." If a "merchant vessel," under the Suits in Admiralty Act exclusive jurisdiction is in the district courts in admiralty. If a "public vessel," jurisdiction may be either in admiralty under the Public Vessels Act or under the Tucker Act, depending on the nature of the claim. It will be recalled that a claim under the Tucker Act exceeding \$10,000 must be brought in the Court of Claims.

Some indication of the difficulties confronting maritime lawyers in choosing a proper forum where the merchant vessel-public vessel issue arises can be seen from the following cases:

(1) In *Calmar Steamship Corp. v. U.S.* (103 F. Supp. 243 (1951)), the district court held that a suit involving a privately owned vessel which was operated for the United States and carrying military supplies was properly in admiralty because the ship was a merchant vessel within the meaning of the Suits in Admiralty Act. The court of appeals reversed on the ground that the ship was not a merchant vessel, since it was carrying war materiel (197 F. 2d 795 (1952)). On appeal to the Supreme Court, it was held that the ship was a merchant vessel and the court of appeals was reversed (345 U.S. 446 (1953)).

(2) In *Aliotti v. U.S.* (221 F. 2d 598 (1955)), the Court of Appeals for the Ninth Circuit held that a suit by the owner of a vessel, bareboat-chartered to the United States, to recover the cost of restoration to its original condition, came exclusively under the Public Vessels Act, whether or not the vessel was a merchant vessel or a public vessel. In direct conflict was the decision of the first circuit in *Eastern Steamship Lines v. U.S.* (187 F. 2d 957 (1951)), which held that a similar suit involving a public vessel came exclusively within the Tucker Act and not the Public Vessels Act.

Conflicting decisions as to jurisdiction also have been rendered in general average claim suits against the United States. The Court of Claims, in *Lykes Bros. Steamship Co., Inc. v. U.S.* (124 F. Supp. 622 (1954)), held that such suits lay in admiralty. On the other hand, the District Court for the Southern District of New York held that jurisdiction lay at law under the Tucker Act (*States Marine Corp. of Delaware v. U.S.*, 120 F. Supp. 585 (1954)). However, the Court of Appeals for the Second Circuit reversed and held that admiralty was the proper forum.

Uncertainties of this kind have arisen in charter accounting suits for the recovery of alleged overpayments to the U.S. Maritime Commission. In *Smith-Johnson Steamship Corp. v. U.S.* (139 F. Supp. 298 (1956)), the Court of Claims held that it had jurisdiction. In a similar suit the Court of Appeals for the Second Circuit held that jurisdiction lay exclusively in admiralty (*Sword Line, Inc. v. U.S.*, 228 F. 2d 344 (1955), 230 F. 2d 75 (1956)). Upon affirmance of the second-circuit decision by the Supreme Court at 351 United States 976 (1956), the Court of Claims reversed its earlier holding and dismissed a large number of suits which had been filed in that court.

The possibility of counsel unavoidably choosing the inappropriate forum is thus apparent. In order to prevent dismissal of suits which would become time-barred when the appropriate forum had finally been determined, this bill would permit the transfer of cases to the appropriate court. Since under transfer procedure the statute of limitations is tolled with the filing of the original suit, an action would not be dismissed because a subsequent decision that the plaintiff had chosen the wrong forum came at a time when the statute of limitations precluded filing a new action in the appropriate court. In dealing with the analogous problem of erroneously chosen venue, section 1406(a) of title 28 authorizes a district court, where it is in the interest of justice, to transfer rather than dismiss a suit brought with improper venue.

The reform of existing practice embodied in this bill is another expression of the underlying philosophy of the Federal Rules of Civil Procedure and of modern legal practice generally, that the decisive

question in a lawsuit should, as far as possible, be its merits and not esoteric, technical problems of procedure.

With respect to the amendment to the Suits in Admiralty Act proposed by section 3 of the bill, as amended, the original Suits in Admiralty Act authorizes a suit against the United States whenever an admiralty proceeding could have been maintained if private vessels or cargo vessels were involved, but it does not mention private persons and property generally. The act also provides that the vessel involved must be "employed as a merchant vessel." The language has produced uncertainty and obscurity.

In *Ryan Stevedoring Co. v. United States* (175 F. 2d 490), it was held that, during the interval it was being trucked across the pier from a lighter to a Government vessel's tackle, cargo was only merchandise or property and not "cargo" within the statutory language so that the United States could not be sued under the admiralty claims act. The inclusion of the word "property" in the amendment to the bill will make it clear that suits against the Government in respect of such cargo may be brought in admiralty, and will avoid technical distinctions of whether "merchandise" or "cargo" is involved.

In *Continental Casualty Co. v. United States* (156 F. Supp. 500), the Court of Claims held there was no admiralty jurisdiction in the district court where the merchant vessel involved had been first employed in commercial traffic but its last employment had been by the Government and at the time of the commencement of the action it was laid-up in idle status and thus was not "employed" at all and thus not employed as a merchant vessel. Similarly, in *Eastern S.S. Lines v. United States* (187 F. 2d 957), there was held to be no admiralty jurisdiction because the vessel was not employed as a merchant vessel where a merchant vessel was employed by her owner in the purely merchant employment of earning him charter hire for her use but the Government, as charterer had employed her as a hospital ship. Contrary results to those of the *Continental* and *Eastern* cases, however, have usually been reached on essentially identical facts because of different interpretation of the same words "at the time of the commencement," "employed," and "Merchant vessel." *Shewan & Sons v. United States* (266 U.S. 108); *Aliotti v. United States* (221 F. 2d 598), and *Sinclair Refining Co. v. United States* (124 F. Supp. 628).

Sections 1 and 2 of the bill were proposed by the Maritime Law Association of the United States. They were supported in the House, by communications from the Chief Judge of the Court of Claims, from the Administrative Office of the U.S. Courts. These sections of the bill are endorsed by the Judicial Conference. Prior similar sections were endorsed by the Judicial Conference at its sessions of September 1954, March 1955, and September 1957.

The Committee on the Judiciary of the House of Representatives conducted hearings on this legislation and favorably reported the bill. In its favorable report, the Committee on the Judiciary of the House of Representatives made the following analysis of the need for legislation which the bill was designed to achieve:

Testimony before a subcommittee of the House Judiciary Committee, by lawyers engaged in maritime practice, revealed substantial difficulty for even the most diligent and experienced lawyers in choosing the proper forum for certain

maritime claims against the Government. This bill would prevent otherwise meritorious claims from being time-barred as a result of such unavoidably inappropriate choices of forum.

A substantial portion of the jurisdictional uncertainty in this area is attributable to confusion in establishing whether a vessel is a "merchant vessel" or a "public vessel." If a "merchant vessel," under the Suits in Admiralty Act exclusive jurisdiction is in the district courts in admiralty. If a "public vessel," jurisdiction may be either in admiralty under the Public Vessels Act or under the Tucker Act, depending on the nature of the claim. It will be recalled that a claim under the Tucker Act exceeding \$10,000 must be brought in the Court of Claims.

The possibility of counsel unavoidably choosing the inappropriate forum is thus apparent. In order to prevent dismissal of suits which would become time-barred when the appropriate forum had finally been determined, this bill would permit the transfer of cases to the appropriate court. Since under transfer procedure the statute of limitations is tolled with the filing of the original suit, an action would not be dismissed because a subsequent decision that the plaintiff had chosen the wrong forum came at a time when the statute of limitations precluded filing a new action in the appropriate court. In dealing with the analogous problem of erroneously chosen venue, section 1406(a) of title 28 authorizes a district court, where it is in the interest of justice, to transfer rather than dismiss a suit brought with improper venue.

The reform of existing practice embodied in this bill is another expression of the underlying philosophy of the Federal Rules of Civil Procedure and of modern legal practice generally, that the decisive question in a lawsuit should, as far as possible, be its merits and not esoteric, technical problems of procedure.

The committee, however, received communications, both from the Secretary of Commerce, as head of the Federal Maritime Administration, and from the Maritime Law Association of the United States, which pointed out that the bill as passed by the House of Representatives was only a partial solution of the existing difficulties. The transfer bill would operate to prevent ultimate loss of rights of litigants, but it did nothing to eliminate or correct the cause of original erroneous choices of forum while it could increase the existing delays. These communications pointed out that what was really necessary was clarification of the jurisdictional language of the admiralty claims acts so as to eliminate their existing obscurity. Similarly, the Department of Justice recommended enactment of the bill only after it was proposed to be thus amended. This section 3 is included.

The committee, after consideration, believes that the bill, as amended, will provide a method to achieve the desirable results which are sought by the proponents of the legislation while preventing for the future as far as possible any reason for repetitions of the errone-

ous original choices of forum. It is, therefore, recommended that the bill, H.R. 5396, as amended, be considered favorably.

Attached hereto and made a part of this report are (1) a letter, dated March 7, 1958, from the Administrative Office of the U.S. Courts, (2) a letter, dated April 30, 1958, from the Chief Judge, U.S. Court of Claims, (3) a letter, dated August 27, 1959, from the Secretary of Commerce, (4) a letter, dated May 12, 1960, from the Maritime Law Association of the United States, (5) a letter, dated June 7, 1960, from the Department of Justice, and (6) a letter, dated June 16, 1960, from the Secretary of Commerce.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., March 7, 1958.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Judicial Conference of the United States, at its session in September 1957, considered the proposal contained in H.R. 3046, now pending before your committee, to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims.

This proposal was first brought to the attention of the Judicial Conference at its September 1954 session, and at that time the Conference approved H.R. 9346 of the 83d Congress, which is identical to H.R. 3046, 85th Congress. At its session in March 1955, the Conference also approved H.R. 668, of the 84th Congress containing the same proposal.

I am authorized to inform you that the Judicial Conference of the United States at its most recent session renewed its recommendation for this proposed legislation and approved the enactment of H.R. 3046.

Sincerely yours,

WARREN OLNEY III, *Director.*

COURT OF CLAIMS,
Washington, D.C., April 30, 1958.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In answer to your inquiry of April 26, in reference to H.R. 3046 now pending before your committee, we are heartily in favor of the purposes of this legislation.

I may add that this type of legislation is especially needed in those cases in which the question of which court has jurisdiction is a close one. In such cases it is rather difficult for the attorney representing the plaintiff to determine in which court suit should be brought. It will be a matter of economy to litigants on both sides to have the case transferred and thus save the expense of dismissal and refile in the other court.

Then, too, it sometimes develops that when the matter of jurisdiction is finally determined in a pending case it is too late to file in the

other court and thus a disposition on the merits is not had. This is perhaps one of the major reasons for the enactment of the proposed legislation.

The need of the legislation seems so clear that unless you wish us to do so we will not have a representative present. However, if you or the committee wish us to do so I shall be happy to come personally or to send one of our trial commissioners, W. Ney Evans, who is thoroughly familiar with the subject.

If you deem it desirable that a representative of our court should be present will you kindly have the office force notify us; otherwise we will treat this letter as stating the views of our court in the matter.

Thanking you for your thoughtfulness in affording us this opportunity, I am,

Sincerely yours,

MARVIN JONES, *Chief Judge.*

THE SECRETARY OF COMMERCE,
Washington, August 27, 1959.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to informal suggestion of your committee staff member, Mr. George S. Green, we are submitting the views of the Department of Commerce, Maritime Administration, on the bill H.R. 5396 to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims.

This bill is the same as H.R. 3046, 85th Congress, on which this Department reported to your committee by letter of August 22, 1958.

We resubmit our views in full on H.R. 5396 for consideration by the committee.

Section 1 of H.R. 5396 provides that: "If a case within the exclusive jurisdiction of the Court of Claims is filed in a district court, the district court shall, unless the parties consent to dismissal, transfer such cases to the Court of Claims." Section 2 provides that: "If a case within the exclusive jurisdiction of the district courts is filed in the Court of Claims, the Court of Claims shall, unless the parties consent to dismissal, transfer such case to any district court in which it could have been brought at the time such case was filed."

Section 3 provides that: "amendments made by this act shall apply to any case or proceeding pending on, or brought after, the date of enactment of this act in the district court or the Court of Claims."

The purpose of the bill, as stated in support of the bill, is to authorize transfer of cases between district courts and the Court of Claims and vice versa, in order to cure jurisdictional defects, and prevent otherwise meritorious claims from being time-barred as a result of inappropriate choice of forum by litigants and counsel. It is contended that cases have been brought in the wrong court due to jurisdictional uncertainties in the law, permitting the running of statutes of limitations before the case can be brought before the proper forum.

This Department does not favor enactment of the bill in its present form. The bill would not cure the alleged fundamental defects in the statutes. It would attack them by complicating procedure and increasing possibilities of conflict. We will enlarge on reasons for this view after summarizing the background of statutes of jurisdiction involved, particularly as they bear on suits against the United States in respect of claims involving merchant vessels.

Title 28, United States Code, section 1346(a)(2), and title 28, United States Code, section 1491, confer original concurrent jurisdiction on the district courts and the Court of Claims over civil actions or claims against the United States founded upon the Constitution, any act of Congress, any regulation of an executive department, or any express or implied contract with the United States, and for liquidated or unliquidated damages in cases not sounding in tort. The jurisdiction of the district courts is limited to claims or actions not exceeding \$10,000 in amount. The statute of limitations in both courts in these cases is 6 years (28 U.S.C. 2401(a)).

Title 28, United States Code, section 1346(b), title 46, United States Code, section 742, and title 46, United States Code, sections 781, 782, confer original exclusive jurisdiction on the district courts over suits against the United States under the Tort Claims Act, the Suits in Admiralty Act, and the Public Vessels Act. The statute of limitations in these cases is 2 years (28 U.S.C. 2401(b), 46 U.S.C. 748, 782).

In certain instances there has been uncertainty as to which of the above two groups a case came under (see *Sinclair Refining Co. v. U.S.*, 124 F. Supp. 628).

The bill would avoid the possible loss of a judicial determination of the merits and enable attorneys to continue the litigation at the litigant's expense no matter whether the mistake as to jurisdiction was excusable or inexcusable. The bill would not cure the alleged uncertainties in the law as to jurisdiction. It even tends to aggravate the problem as to jurisdiction. It may result in delays to the unfair prejudice of the Government. There are possibilities of conducting the case to a decision on the merits, either in the court where the suit is brought or in the transferee court with later reversal on the matter of jurisdiction. It will tend to increase the amount of litigation in the Court of Claims, since the litigant comes to no harm by reason of a decision that the case should be transferred to the district courts.

If a suit is brought in the Court of Claims on the theory that it belongs to the first group and it is ultimately determined that it belongs to the second group, the Court of Claims has no alternative but to dismiss the suit. At that point, the 2-year statute of limitations may have run and suit in the district court could be barred. Section 2 of the bill would change present law to require transfer of the suit to the district court. If there is real uncertainty in the law as to the proper forum for a case, considerations of equity would dictate allowing the transfer of a timely brought suit, especially since title 28, United States Code, section 1500, prevents concurrent suits on the same claim in the Court of Claims and a district court. However, if suit is improperly brought in the Court of Claims as a result of inexcusable negligence or in the

hope of obtaining some procedural or tactical advantage, the court should have discretion to dismiss the suit rather than transfer it. This would be similar to title 28, United States Code, section 1406(a), which authorizes the district court to transfer a suit brought in a district court with the wrong venue to the district court with the right venue, if it be in the interest of justice. Accordingly, it is recommended that section 2 of the bill be amended by striking "unless the parties consent to dismissal," and substituting therefor "if it be in the interest of justice" (p. 2, line 6).

Section 1 of the bill would require transfer to the Court of Claims of cases within the exclusive jurisdiction of the Court of Claims which are filed in a district court. Since any such case would have a 6-year statute of limitation and the only factor that could put it within the exclusive jurisdiction of the Court of Claims would be that it was a claim in excess of \$10,000, the justification put forth in support of the bill; i.e., that it is necessary to preserve claims that would otherwise be time-barred, does not in any way support section 1 of the bill, and little or no need for transferrals from the district courts to the Court of Claims has been shown.

Section 2 of the bill should be further amended to clarify the operation of the bill, if it be enacted, in order to make it clear whether the case will be outlawed if the statute has run in the right court before filing in the wrong court. According to the statement in the report of the House committee on the measure, it is intended that the statute will be tolled while it is pending in the wrong court. If the committee determines that the objective of the measure is desirable and should be enacted into law, we believe it should be clarified with respect to the running of the statute of limitations by amendments as follows: page 2, line 5, after the words "Court of Claims", insert the words "within the limitations period applicable in the district courts to such a case"; and line 8, after the word "filed", insert a comma and the words: "where the case shall proceed as if it had been filed in the district court on the date it was filed in the Court of Claims."

If section 1 of the bill is approved by your committee, it should be amended in a comparable way, as proposed with respect to section 2 of the bill.

As stated above, we do not believe that these clarifying or corrective amendments go to the fundamentals of the problem involved in the legislation. The testimony adduced in support of the bill and statements in explanation of the bill indicate that the problem arises from uncertainty as to the field of jurisdiction of the Court of Claims and the district courts of the United States. We believe that the Suits in Admiralty Act (sec. 2 thereof) should be amended to clarify the jurisdiction of the district courts over suits arising under the Suits in Admiralty Act to provide jurisdiction for proceedings in personam against the United States or corporations owned by the United States in respect of cases where a proceeding in admiralty could be maintained if a private person, vessel, cargo, or other property was involved.

The present language in the first sentence of section 2 of the act of March 9, 1920 (usually referred to as the Suits in Admiralty Act; 46 U.S.C. 742), has given rise to judicial problems which involve questions of jurisdiction and uncertainties as to the proper forum about which proponents of the bill complain. Many such cases are referred to in the hearings and report on this legislation.

In order to attack the problem on a fundamental basis, we recommend that a further section be incorporated in the bill to amend section 742 of title 46, United States Code. Inasmuch as the Department of Justice is in charge of defense of suits under the Suits in Admiralty Act, we have consulted with the Civil Division of that Department as to appropriate language of amendment. In accord with such consultation, this Department recommends that the bill be amended by inserting a new section 3 (renumbering the present sec. 3 as sec. 4) to read as follows:

"SEC. 3: The first sentence of section 2 of the Act of March 9, 1920 (ch. 95, 41 Stat. 525; 46 U.S.C. 742), is amended to read as follows: 'In cases where a proceeding in admiralty could be maintained if a private person, vessel, cargo, or other property was involved, a proceeding in personam may be brought against the United States or against any corporation mentioned in section 1 of this Act.'"

If the bill is amended in accord with the objectives of the amendments herein presented, this Department would not object to its enactment.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter to the committee.

Sincerely yours,

FREDERICK H. MUELLER,
Secretary of Commerce.

KIRLIN, CAMPBELL & KEATING,
Washington, D.C. May 12, 1960.

Re H.R. 5396, bill to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington 25, D.C.

DEAR MR. CHAIRMAN: H.R. 5396, introduced by Mr. Forrester, was reported favorably by the House Committee on the Judiciary on June 10, 1959, passed by the House of Representatives on June 15, 1959, and referred to your committee for its consideration.

On August 27, 1959, your committee received a letter from the Secretary of Commerce objecting to the bill unless certain additional provisions set forth in his letter were included.

This legislation and the amendments proposed by the Secretary of Commerce were considered at meetings of the Maritime Law Association on November 6, 1959 and May 6, 1960, at which the Association accepted and endorsed the amendments proposed by the Secretary of Commerce with respect to the transfer sections of the bill (secs. 1 and 2), and also agreed to support an amendment to section 2 of the Suits in Admiralty Act which differs in some respects from an additional provision proposed by the Secretary of Commerce.

There is attached hereto a copy of the bill as it passed the House, showing the amendments now proposed. The proposed changes in the bill are indicated by striking through parts to be omitted and by underscoring the language proposed to be inserted.

The amendments appearing in sections 1 and 2 of the bill are those proposed by the Secretary of Commerce. They are clarifying in nature, and have been endorsed by the Judicial Conference and by the Maritime Law Association.

Section 3 of the amended bill is a slight revision of the additional amendment proposed by the Secretary of Commerce, seeking to revise section 2 of the Suits in Admiralty Act. It is intended to remedy the difficulties encountered under the present law in determining the proper forum in which to bring suits against the United States. It has received the consideration of lawyers engaged in the admiralty practice who are members of the Maritime Law Association.

Section 4 of the amended bill (formerly sec. 3) makes provision for the effective date of the legislation.

I am authorized by the Maritime Law Association to indicate to your committee its acceptance of the procedural amendments set forth in sections 1 and 2 of the amended bill as proposed by the Secretary of Commerce, and to advocate the adoption of the Secretary's proposed amendment to section 2 of the Suits in Admiralty Act as slightly revised by the Maritime Law Association.

Your prompt consideration of this legislation will be greatly appreciated, as those lawyers engaged in the admiralty practice who are members of the Maritime Law Association are greatly interested in having it become law before the adjournment of the 86th Congress.

Very truly yours,

ROBERT E. KLINE, Jr.,

*Chairman, Committee on Jurisdiction and Venue in Suits
Against the United States, the Maritime Law Association of
the United States.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C. June 7, 1960:

HON. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 5396) to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims, as proposed to be amended by the Maritime Law Association.

As the bill passed the House of Representatives, section 1 would amend section 1406 of title 28, United States Code, to provide that if a case within the exclusive jurisdiction of the Court of Claims is filed in a district court, that court shall, unless the parties consent to a dismissal, transfer the case to the Court of Claims. Section 2 would amend chapter 91 of title 28 to provide similarly for transfers to the district courts of cases erroneously brought in the Court of Claims.

The Maritime Law Association has endorsed procedural amendments stated to have been proposed by the Secretary of Commerce to sections 1 and 2. These amendments would authorize a transfer in the interest of justice, and would provide that the case shall proceed

in the court to which it has been transferred as if it had been filed in that court on the date that it was filed originally in the wrong forum. Also, the Association has endorsed an amendment to the jurisdictional section, section 2, of the Suits in Admiralty Act as amended and supplemented by the Public Vessels Act (41 Stat. 525, 46 U.S.C. 742; 43 Stat. 1112, 46 U.S.C. 781). This amendment is expected to eliminate the ambiguity which now so often results in the selection of improper forums by members of the admiralty bar.

The Department of Justice has no objection to the enactment of this legislation as proposed to be amended.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

JOHN D. CALHOUN,
Acting Deputy Attorney General.

THE SECRETARY OF COMMERCE,
Washington, June 16, 1960.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in reply to your request of May 13, 1960, for the views of this Department with respect to suggested amendments by the Maritime Law Association of the United States to H.R. 5396, an act to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims.

As originally introduced, and as passed by the House of Representatives, H.R. 5396 was designed to remedy jurisdictional uncertainties as between the district courts and the Court of Claims by providing for transfer to the proper forum in cases of inappropriate choice by counsel and litigants. In our August 27, 1959, letter to your committee regarding H.R. 5396, we indicated our belief that, unless coupled with clarification of the basic jurisdictional uncertainties, transfer authority would not provide an adequate remedy for the procedural difficulties involved. We recommended certain additional language to accomplish this clarification, and to improve the transfer sections of H.R. 5396.

It is noted from the attachments to your May 13, 1960, letter that our proposed amendments were considered and with slight modifications endorsed by the Maritime Law Association of the United States. We believe that the changes suggested by them are of a perfecting nature and are fully in accord with the objectives of our proposed amendments.

We therefore recommend favorable consideration of H.R. 5396, if amended as suggested by the Maritime Law Association.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter to your committee.

Sincerely yours,

FREDERICK H. MUELLER,
Secretary of Commerce.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

§ 1406. Cure or waiver of defects.

(a) * * *

(b) * * *

(c) *If a case within the exclusive jurisdiction of the Court of Claims is filed in a district court, the district court shall, if it be in the interest of justice, transfer such case to the Court of Claims, where the case shall proceed as if it had been filed in the Court of Claims on the date it was filed in the district court.*

TITLE 28, UNITED STATES CODE

CHAPTER 91.—COURT OF CLAIMS

1491. * * *

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1506. *Transfer to cure defect of jurisdiction.*

§ 1506. TRANSFER TO CURE DEFECT OF JURISDICTION.

If a case within the exclusive jurisdiction of the district courts is filed in the Court of Claims, the Court of Claims shall, if it be in the interest of justice, transfer such case to any district court in which it could have been brought at the time such case was filed, where the case shall proceed as if it had been filed in the district court on the date it was filed in the Court of Claims.

TITLE 46, UNITED STATES CODE

§ 742. LIBEL IN PERSONAM.

In cases where if such vessel were privately owned or operated, or if such cargo were privately owned [and] or possessed, *or if a private person or property were involved*, a proceeding in admiralty could be maintained [at the time of the commencement of the action herein provided for, a libel], *any appropriate non-jury proceeding* in personam may be brought against the United States or against any corporation mentioned in section [741 of this title.] *1406 (c) of title 28, United States Code.* [as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation.]

